

The court went on to say:

"The early fears of the bar and bench have largely disappeared with experience."

Yet, in this same case one of the five judges in the Court of Appeals hearing this case said the separation of powers as written in the constitution means what it says.

It so happens I agree with Judge Henderson and with Delegate Macdonald when they say it just is not true, and therefore I shall vote against the Committee Recommendation.

THE CHAIRMAN: Does any other delegate desire to speak in favor of the recommendation?

DELEGATE ANDERSON: Mr. Chairman, I rise to speak in favor of the Committee Recommendation, notwithstanding the distinguished spokesman against this provision.

As you know, this came up in the Declaration of Rights provision, and I think I spoke then and pointed out at that time that forty states have such a provision providing for the separation of the power.

Secondly, I think some people misunderstand this provision. To start with, our Court of Appeals has repeatedly stated it does not apply to municipal corporations. I read only this morning — I cannot think of the last name, *Pressman v. somebody* in Baltimore — where they said it did not apply, and it was an old case, so it does not apply to municipal governments at all.

The third point is that it does not say that the legislature cannot combine all three of these powers, in a body, such as the workmen's compensation commission. There is no question about that.

The legislature has the right to put the power wherever they want it, but the purpose of this separation of powers provision is to prevent the judiciary from assuming powers that are delegated to the executive, to prevent the executive from assuming powers that are delegated to the legislature.

In other words, it is purposely set up to keep the constitutional officers from assuming power that is not delegated to them by the constitution, and I think this is a fundamental principle that should be continued in this constitution.

THE CHAIRMAN: Delegate Winslow.

DELEGATE WINSLOW: Mr. Chairman, I shall be very brief. We were re-

minded a few minutes ago that we should go and do our homework. I suggest as the homework for the delegate that he go and read the Constitution of the United States. No place in American constitutional history have the courts been so careful to hold the various departments of government to their constitutional duties as at the federal level. Still you may read the Constitution of the United States from cover to cover and find no mention of the separation of powers doctrine.

THE CHAIRMAN: Delegate Willoner.

DELEGATE WILLONER: I wish to speak in opposition to this proposal. As I spoke to it the other day, I would like to point out there is a major change in this proposal in that the word "ought" is changed to "shall".

As pointed out in the opinion read by Judge Sherbow, the present language is oratorical in the first part of it; the second part of it is mandatory.

I would also like to point out in section 60 of Article III, which the Committee did not even consider — that is, giving the General Assembly the power to suspend a sentence or to have an indeterminate sentence or to release on parole — was put in the constitution to get around this provision, and this provision has been left out at this point.

Therefore, I would assume that if we leave it out, the courts will no longer be able to parole or provide indeterminate sentences or suspend sentences, which is the present practice today.

This particular provision has a lot of problems in it. There are states where this language has been held to prevent judicial review of legislative acts, and it should not be in the constitution, at least with the "shall" in there.

THE CHAIRMAN: Are you ready for the question?

(*Call for the question.*)

The Clerk will ring the quorum bell.

The question arises on the adoption of Committee Recommendation No. GP-11.

A vote Aye is a vote in favor of the recommendation. A vote No is a vote against.

Cast your votes.

Has every delegate voted? Does any delegate desire to change his vote?